

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

**JOSEPH HARDESTY, ET AL.,** : Case No. 1:16-CV-00298  
Individually and on behalf of All :  
Others Similarly Situated : Judge Timothy Black  
Plaintiffs, :  
v. : PLAINTIFFS' UNOPPOSED MOTION  
THE KROGER CO., et al. : TO FILE UNDER SEAL  
Defendants. :  
:

Now come Named Plaintiffs Joseph Hardesty, Madeline Hickey, Derek Chipman, and the 24 Collective Action Members they represent (collectively, "Plaintiffs"), and respectfully request that this Court grant the Plaintiffs leave to file certain additional exhibits to Plaintiffs' Motion for Summary Judgment under seal, which were not previously filed with the parties' respective certification/de-certification motions. The grounds for this Motion are set forth in the attached Memorandum.

Respectfully submitted,

/s/ Joshua M. Smith  
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Joshua M. Smith (0092360)  
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Attorneys for Plaintiffs

**MEMORANDUM IN SUPPORT**

On August 3, 2016, a Stipulated Protective Order (the “Protective Order”) was filed with the Court. (*See* Doc#17). Pursuant to Section 8 of the Protective Order, the Parties are required to file under seal any protected confidential materials. Plaintiffs anticipate filing one or more exhibits to its Motion for Summary Judgment that have confidential designations, and as such seek leave to file those documents under seal.

On June 7, 2017, The parties filed a joint motion for leave to file certain exhibits under seal for purposes of Class Certification and Decertification. (Doc#30). The Court granted this motion, and numerous confidential exhibits were filed pursuant to this Court’s entry granting leave. (Doc#31). While many of the exhibits supporting Plaintiffs Motion for Summary Judgment were previously filed with this Court during certification briefing and thus do not need refiled, there are a number of additional unfiled exhibits designated confidential which support Plaintiffs’ Motion for Summary Judgment. Therefore, the Plaintiffs respectfully request that they be provided leave to file those additional exhibits under seal. Plaintiffs have discussed this motion with Counsel for Kroger, who has indicated they have no opposition to the motion. A proposed Entry is attached for the Court’s consideration.

Respectfully submitted,

/s/ Joshua M. Smith  
Peter A. Saba (0055535)  
Joshua M. Smith (0092360)  
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**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and accurate copy of the foregoing was served electronically through the District Court's electronic case filing system upon David K. Montgomery, Esq., and Ryan M. Martin, Esq., Jackson Lewis P.C., PNC Center, 26<sup>th</sup> Floor, 201 East Fifth Street, Cincinnati, Ohio 45202, this 22nd day of February, 2019.

/s/ Joshua M. Smith  
Joshua M. Smith (0092360)